

**1312224 [2014] RRTA 308 (3 April 2014)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1312224  
**COUNTRY OF REFERENCE:** Pakistan  
**TRIBUNAL MEMBER:** Stuart Webb  
**DATE:** 3 April 2014  
**PLACE OF DECISION:** Melbourne  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Pakistan, applied to the Department of Immigration for the visa [in] November 2012 and the delegate refused to grant the visa [in] July 2013.
3. The applicant appeared before the Tribunal [in] November 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Pashto and English languages. The applicant was represented in relation to the review by his registered migration agent. The applicant provided a copy of the delegate's decisions to the Tribunal.

### **RELEVANT LAW**

4. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

#### **Refugee criterion**

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
8. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

9. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
10. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
11. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
12. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
13. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
14. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

15. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

16. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
17. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **Section 499 Ministerial Direction**

18. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

19. The applicant provided the following statement with his application, slightly edited.

I am a [male] citizen of Pakistan born in [Village 1], Kurram Agency, Federally Administered Tribal Areas ("FATA"). I am a Pashtun and Shia Muslim member of the Bangash Tribe. However, my mother and wife are both members of the Turi tribe — so I am considered to be a Bangash-Turi mix.

Sometime in about 2003, my family needed money to survive and being the head of my family, I decided that I would look for work outside the region. I knew that it was going to be difficult to be outside the Kurram Agency. Being the unique mix both Pashtun and Shia, I - like other people in my situation - was anxious about being outside the Kurram Agency. I knew that almost all Shias outside the Kurram Agency were Hazaras or Punjabis and they held great animosity towards the Pashtuns. I also knew that almost all Pashtuns outside the Kurram Agency were strictly Sunni and rejected the Shies. Further, I was a Bangash-Turi mix and given both the Bangash and Turi tribes strong rejection of the Taliban in the Kurram Agency, tribesmen were hated by the Taliban and their supporters. Nonetheless, my family needed me to take such risks.

In 2003, I found a job as [Occupation 2] and relocated to Rawalpindi. I knew nobody in Rawalpindi and being a Pashtun Shia and Bangash-Turi mix, I had to be very cautious about approaching strangers. My boss at the time understood my difficulties and allowed me to reside at the workplace office. My job meant that I needed to work off-site for about three or four hours a day and spent much of the remainder of the day in the office, manning the telephone or sleeping.

I would travel back to my home to visit my family about once every two or three months and would stay with them in the Kurram Agency for about two weeks at a time. I missed

my family and my community very much and never enjoyed living away from them. However, knowing that the risks I was taking provided my family was my main priority.

While in Rawalpindi, I focused my attention on working. At times I approached the Shia mosques in the area to see if I could find any other Pashtuns with whom I could pray. However, on each occasion, I would see only Punjabis and they were unwelcoming to a Pashtun in their mosque. Given the climate of sectarian violence in Pakistan, a Pashtun in a Shia mosque outside the Kurram Agency is a rare sight and evokes fear in the Shia people.

In April 2007, a war broke out in the Kurram Agency. The roads between Parachinar and Peshawar were blocked by the Taliban and the only way to travel on them was with government escorts. However, even the government convoys were regularly attacked and Shias were murdered. This situation caused me much grief. I was stranded in Rawalpindi and unable to travel back to my home to visit my family.

Between 2007 and 2012, I would only travel back to the Kurram Agency about once a year. On each of these occasions, I was terrified. I only travelled along these roads for the purposes of seeing my wife and children who I missed dearly.

Over the years, the situation did not improve and the Kurram Agency remained a place of Shia persecution. I was unable to relocate my family outside the Kurram Agency. As Shia Pashtuns and Bangash-Turi mixes it was far too dangerous for my children to attend schools and mosques. Further, I could never afford moving my family to re-settle in Rawalpindi.

With no other options, on [date] January 2012, I fled Pakistan.

If I am forced to return to Pakistan, I fear that I will be harmed / mistreated. I fear that I will be harmed / mistreated by Sunni extremists. If I am forced to return to Pakistan, I fear that I will be harmed, mistreated or killed for the reasons of my religion: I am a Shia Muslim. The fact that I am a Pashtun Shia is visible on my National ID Card. The fact that I am a Shia is easily identifiable from my name and accent.

If I am forced to return to Pakistan, I fear that I will be harmed / mistreated for reasons of my membership to any or all of the following particular social groups:

- Bangash tribe members;
- Turi tribe members; and / or
- Bangash-Turi tribe members.

I fear that the authorities in Pakistan have neither the capacity nor the willingness to protect me.

20. The applicant provided identification cards with his application, as well as a copy of his birth certificate.
21. A post hearing submission was also provided providing some country information about Shia, and that the applicant, identified as a Shia Muslim, will be persecuted throughout Pakistan.
22. The delegate accepted that the applicant was from the Kurram Agency, Pakistan. The applicant had witnessed or heard about attacks on Shias by Sunnis, the Taliban and other anti-Shia groups. The applicant has not personally been targeted. The delegate considered claims that that the

applicant had been employed in Rawalpindi for 9 years, and lived and worked at the same address for this time. His employer was a Shia, and he did work in the vicinity of his place of work. The applicant stated that he was told to leave his job. In 2012 the applicant returned to his family home in [Village 1], before coming to Australia.

23. The delegate accepted that security issues and sectarian violence presents a major challenge to the Pakistani government, police and security authorities. However there was no evidence to indicate that the Pakistani authorities are deliberately denying the applicant or other Shia national protection, or deliberately denying or failing to provide Shia citizens the same degree of protection as that accorded to any other nationals. The delegate considered that the authorities were taking action against the Taliban. The delegate did not accept that the applicant did not have a real chance of being persecuted for a convention based reason. The delegate also considered relocation. The delegate did not accept that the applicant's accent or dress would prevent him from residing safely in a city like Islamabad, where there is less sectarian violence. The delegate noted he spoke Urdu and Punjabi, and would not need to speak Pashtu, so there was no issue as to a Parachinar accent. The applicant had lived in Rawalpindi for a number of years without being targeted or harmed. Separation from his wife was for economic reasons. Country information indicates that the support for religious extremism is not universal and there is a large and growing opposition movement made up of people who do not support extreme interpretations of Islam. The delegate did not accept that Bangash or Turi are being systematically and discriminatorily targeted across Pakistan. There is a significant Shia community in Pakistan. Any chance that the applicant would be involved in any act of violence against the Shia community is remote. The applicant or his family have not been targeted for harm. The applicant could return to Pakistan. If he chose to do so, he could relocate his family to another part of Pakistan.
24. The applicant's advisors provided a submission to the Tribunal. It provided the following information.

In or around 2003, the Applicant's expanding family began suffering from extreme levels of poverty. As the eldest son of the family, the Applicant decided that he would seek employment outside of the region. The Applicant was aware that as a Pashtun Shia, he was going to be exposed to sectarian violence, or at the very least discrimination, outside of the Kurram Agency. Pashtuns were generally Sunni Muslims and were treated with animosity by Pakistan's Shia population (majority being Hazaras or Punjabs). Conversely, Shias were seen as infidels by Sunnis (including other Pashtun's and the Taliban). Subsequently the Applicant would be the subject of sectarian violence from both sides of the ethnic and religious divide in Pakistan.

The Applicant did not travel to Rawalpindi with any acquaintances. Without a supporting social network, the Applicant was viewed with suspicion in Rawalpindi by both Shias and Pashtuns. However, shortly after arriving in Rawalpindi the Applicant obtained employment at [Employer 3 as Occupation 2]. The Applicant's job duties included answering phones whilst in the office and [other tasks].

The Applicant was also provided with accommodation at the [Employer 3] office premises which were situated at [an address in] Rawalpindi. Whilst employed at [Employer 3] the Applicant met a man [who] was also a Shia and warned the Applicant of the dangers of employment as a Shia Pashtun. He indicated that when on jobs the Applicant should not spend more time than necessary at the homes of customers, or engage in conversations. He also warned that the Applicant should avoid going to other areas of Rawalpindi unless absolutely necessary and to spend as much time as possible in the office premises.

On the occasions that the Applicant attempted to travel to the local Shia Mosques to perform his religious prayer, he was abused by the majority Punjabi population who were often abusive to him on account of his Pashtun appearance. As a result of such experiences, the Applicant spent the majority of time at his work place.

Over the following years the Applicant returned to Kurram Agency to visit his family approximately every two to three months. On these occasions the Applicant would remain with his family for approximately two weeks before returning to Rawalpindi.

The Applicant is easily identifiable as a Shia because:

- a. of his surname of [a] descendent of the Prophet Muhammad, who was killed at Karbala in Iraq 1,323 years ago, and was thus denied the leadership of Muslims that Shias believe was his right);
- b. of his strict observance of Shia Islam including wearing black clothing the month Muharram and attending Shia mosques; and
- c. because his identity documentation (for example his domicile certificate) refers to him as a Bangash (Shia Muslim)

However, the dangers faced by Shias were not limited to travel. During his stay at Rawalpindi, the Applicant was aware of several instances of kidnappings of assaults against Shias. He was often warned by bearded men (Wahhabi's) in Rawalpindi to leave his job and leave the city because of his religious background. The Applicant believes these warnings against him was because during the course of his employment he was often required to enter the homes of and interact with Sunni Muslims which was seen as offensive by the Wahhabi's (who considered Shias to be infidels).

To avoid persecution, the Applicant focused on his employment and limited exposing himself to situations of danger. The Applicant rarely ventured outside of his work place unless absolutely necessary (although as a religious Shia the Applicant continued to attend significant Shia events such as Muharram).

On or around 2010 the Applicant applied for and obtained a Pakistani passport. He obtained this passport because he feared sectarian violence and felt the document would allow him to quickly depart the country if necessary.

By late 2011 the Applicant decided that he could no longer remain in Pakistan. For example, Human Rights Watch recorded at least 18 sectarian attacks on Shias in 2011 alone. These attacks occurred with high frequency in Kurram Agency and throughout Pakistan. Subsequently, the Applicant made the decision to seek asylum overseas to find a better life for his family.

[In] November 2011 the Applicant returned to [Village 1] by government convoy. Despite the fears of the Taliban, the Applicant was compelled to make the perilous journey for a number of reasons:

- a. he had not seen his family for approximately a year and was aware that he may never see his family again by departing Pakistan (he had strong emotional desire to visit his family);
- b. he was required to obtain personal documentation that was necessary to provide to his people smuggler and to take to any foreign countries that he would seek asylum in;

c. he required finances to fund his travel arrangements which were too large to be securely transferred from [Village 1] to Rawalpindi through third party channels;

d. he did not consider that every convoy that travelled to Parachinar would be hijacked by the Taliban and considering the above factors, took a calculated risk.

The Applicant and his family did not consider that they could relocate to other areas of Pakistan because of their Pashtun Shia background. Of Pakistan's total population of approximately 180 million,<sup>32</sup> an extremely small minority of approximately 250,000 are both Pashtun and Shia.<sup>33</sup> This made the Applicant and his family vulnerable to harassment, discrimination and persecution throughout Pakistan. For this reason, the Applicant was forced to live discretely and in hiding whilst he previously remained in Rawalpindi for work.

25. It was submitted that the Applicant's real link with Pakistan is in [Village 1], rather than in Rawalpindi because of the following reasons:

- a) the Applicant's complete family (including his wife and children) remain in [Village 1] and have always remained based there;
- b) the Applicant regularly returned to [Village 1] (approximately every two to three months) April 2007 such that his stay in Rawalpindi was purely for employment reasons (the Applicant spent a substantial period of time in [Village 1]);
- c) from April 2007 to November 2011 the Applicant lived in Rawalpindi discretely primarily working and avoiding interaction and establishment with the community for fear of harm (the Applicant did not establish ties to Rawalpindi);
- d) it was only due to Taliban road blocks that the Applicant was prevented from returning to [Village 1] regularly from 2007 to 2011 (effectively being stranded in Rawalpindi); and
- e) the Applicant has a Kurram Agency domicile certificate

26. The submission provided the following information regarding the attacks on Shia.

27. A practical summary of the persecution faced by Shias in Pakistan is aptly documented by the UK Home Office UNHCR Guidelines dated 7 June 2012.

In the last year sectarian violence targeting the Shia minority, including through attacks on Shia processions and religious gatherings and sites, reportedly continued. Such attacks were carried out predominantly in the North-West of the country – including in Dera Ismail Khan, Hangu, Kohat and Tank districts of Khyber Pakhtunkhwa province, and Kurram and Orakzai Agencies in FATA – as well as in urban centres throughout the country – including Gilgit (Northern Areas), Lahore. Sectarian violence has resulted in hundreds of deaths and large-scale displacements from Kurram. Tensions and clashes between Shia and Sunni tribes in Kurram Agency kept the main road linking the region to the rest of the country blocked throughout 2010 and 2011 (with the exception of a brief reopening in February 2011), thereby impeding access to provisions as well as healthcare services. Incidents of violence against the Shia minority continued in 2011 in Pakistan's Kurram tribal agency, despite an alleged peace deal between the Taliban and Shia tribes in the area brokered by Pakistani security forces in February 2011. In light of the foregoing, UNHCR considers that **members of the Shia community, particularly those in areas where Taliban-affiliated groups are active, such as the northwest of Pakistan and in urban centres, may, depending on the individual circumstances of**



**the case, be in need of international refugee protection on account of their religion and/or (imputed) political opinion.”** (Highlighted by applicant).

28. Further country information was provided that sought to broaden the violence across Pakistan. This included the following statement.

29. Further, the South Asia Terrorism Portal (SATP) noted in its South Asia Intelligence Review, dated 23 April 2012 that:

Violence against the Shi'ite minority has long been endemic in Pakistan, with a progressive increase in scale and geographical distribution over time. Living in absolute fear, the Shia community, variously estimated at between five and 20 per cent of Pakistan's 187 million population, is currently being targeted in an escalating and vicious cycle of sectarian attacks that **have enveloped the entire country**.

...

According to partial data compiled by South Asia Terrorism Portal (SATP) there have been at least 772 incidents of sectarian violence in Pakistan from January 1, 2005, to April 22, 2012, which have claimed at least 2,175 lives [these are likely to be underestimates, as information flows from many of the conflict-ridden regions of Pakistan are severely restricted]. (Highlighted by applicant).

30. With respect to relocation, the following information was provided.

The Delegate relied on the Applicant's temporary residence in Rawalpindi as evidence of the Applicant's ability to relocate to other parts of Pakistan. However the Applicant's discrete lifestyle and constant fear of harm in Rawalpindi demonstrates his claims that it is unsafe for him to relocate to Rawalpindi (though he was compelled to out of necessity to provide for his family). Instances of incidents in Rawalpindi were included in the submission. It submitted that as indicated by the US Department of State, while there may not be legal barriers prevent the movement of person within Pakistan, there are several other socioeconomic, environmental and security barriers which make relocating unreasonable.

31. Further information on relocation to other centres was also provided.

32. It was submitted that the applicant as a Shia Pashtun could not relocate. The submission stated:

The Applicant's unique status as a Shia Pashtun renders relocation outside the Kurram Agency unreasonable. In a 5 January 2011 RRT Country Advice, the plight of this vulnerable minority was addressed at length:

The exact number of Shi'ite Pashtuns is unclear; however, sources indicate that there are at least 250,000 in Pakistan, many of whom traditionally reside in the Federally Administered Tribal Areas (FATA) of Kurram Agency and Orakzai Agency. Most of these Shi'ite Pashtuns appear to be members of the Turi tribe; however, at least 8 percent of the neighbouring Bangash tribe also practise Shia Islam. Some Shi'ite Turi and Bangash have fled conflict in these agencies, and now live in nearby districts of Khyber-Pakhtunkhwa (formerly known as North West Frontier Province or NWFP). Given their history of conflict with Sunni Pashtuns from both Pakistan and Afghanistan in recent decades, it is possible that Shi'ite Pashtuns have developed a definite group identity based on both religion and tribe/clan.

...

If the Applicant was to relocate outside the Kurram Agency, he would seek to live in an area where he is supported by his tribe. Tribal ties are significant for Pashtuns from the FATA area. Established with an aim of substantial legal and political anonymity, the tribal ties dictate employment opportunities, family creation and social acceptance for individuals. Given the insignificant number of Turis outside the Kurram Agency, the Applicant would struggle to find an area of Pakistan where he would be provided with the tribal support upon which he depends.

## **FINDINGS AND REASONS**

### **Country of nationality**

33. The applicant claims to be a citizen of Pakistan, and has consistently claimed this. He has provided documentary evidence that show he is of Pakistani background, including a passport and other documentary evidence. The Tribunal finds that the applicant is a citizen of Pakistan, that Pakistan is the applicant's country of nationality for the purposes of the Refugees Convention, and that Pakistan is his receiving country for the purposes of complementary protection.

### **Third country protection**

34. There is no evidence before me to suggest that the claimant has the right to enter and reside in any safe third country for the purposes of s.36(3) of the Act.

### **Credibility**

35. The applicant has made a number of claims as to why he fears persecution in Pakistan. His fears arise from his background, a Shia, a Shia Pashtun, as a Bangash tribe member and an association with the Turi tribe. The applicant has conceded that he and his extended family have not been harmed in Pakistan by the Taliban or any insurgent group, though the applicant claims to have received discriminatory treatment because of his background.
36. The applicant states he has limited education, to [a stated year], then left to work on the family farm. In 2003, as the oldest son, he was required to leave the family farm and find work elsewhere to support the family. The applicant went to Rawalpindi, where through advice of a friend, he found work, [in Occupation 2]. He remained at this work in Rawalpindi from 2003 to 2012. The applicant stated he chose Rawalpindi because it was not too far away from [Village 1], where his family resided, and that he 'liked' Rawalpindi.
37. The applicant's experience in Rawalpindi is germane to the applicant's claims that he will be persecuted because of his background. It is useful to consider the applicant's experience in this city in considering his claims of fearing serious or significant harm on return to Pakistan.
38. The applicant initially resided in a hotel, but then got the work as a labourer for [Employer 3], then after two years was employed by the company [in Occupation 2. Work details deleted]. The applicant earned around 20 000PKR per month, most of which he sent back to his family. The office at [Employer 3] had a room available, the applicant set up a bed at this office, there was a bathroom and kitchen he could use. The company owner was a Shia who had his own home in Rawalpindi, the remainder of the mixed Shia and Sunni workforce were locals who went home after completing the work. The applicant inhabited the office for free. The applicant stated he could not afford to rent a house or bring his family, he was sending most of his money home.

From 2003 to 2007 he would return home to [Village 1] every 2 to 3 months for 10 to 15 days. If the situation was not good, such as after 2007, he returned home every 6 months.

39. The Tribunal asked where the applicant worked, whether it was Rawalpindi wide or more locally based. The applicant stated that it was just in the local area, there were many businesses in that area to keep the company busy. This information was contrasted with the claim that the applicant worked in a limited area to avoid being noticed. The applicant stated that his work required him to be out of the office for only a short period of time each day, variously described as 2 to 3 hours, and 3 to 4 hours in his statement, then return to the office to do office work, including answering the telephone, responding to complaints, watching television himself.
40. The Tribunal asked the applicant as to what other activities he undertook in Rawalpindi. The applicant stated that he attended the same Imambargah for religious purposes on a Friday and on other religious occasions. He mostly got his food delivered from a hotel that was not too far away. The applicant claimed he did not go out much for fear of being harmed. The applicant claimed he was identifiable due to his wearing of black clothes, his attendance at the mosque, and comments from by 'bearded men' to stop doing the work he was doing, that he was providing non-Islamic [services]. The applicant responded to these comments by saying that it was permitted by the government to provide the [service]. The applicant stated that he was told several times to abandon the job because he is a Pashtun Shia. The Tribunal noted that the applicant did not listen to this advice, and nothing happened to him while he continued to work for that company. The Tribunal finds that the applicant was not at risk of being harmed due to his employment activities for this company. The Tribunal does not accept that the applicant had received any threats that would require him to leave the job, his continued employment until returning to Parachinar to be with his family demonstrates that he was not concerned by any discussion he may have had about the work he was conducting.
41. It was submitted by the applicant's advisor that the applicant was living discreetly in Rawalpindi to avoid harm. The Tribunal questioned this submission, as the applicant's residence, work, and routine was regular and well known for a period of 9 years, a significant period of time, he was seeking to save money for his family so did not go out to spend on other items, with ready access to entertainment in his office/home. The Tribunal considers that the applicant was not living discreetly for the purposes of avoiding harm, The Tribunal finds that the applicant was living frugally for economic reasons. The Tribunal notes that he was working for a Shia employer, and was known as a Shia Pashtun within the community he lived in, to no ill effect or harm. The Tribunal does not consider that the applicant was living discreetly in Rawalpindi.
42. The applicant has claimed that he decided to seek to live elsewhere because he feared the rise of the Taliban in Pakistan. He claimed the LeJ was targeting the religious locations of Shias, including the Imambargah in Rawalpindi where he attended. When asked about this targeting of religious locations in Rawalpindi, the applicant stated that not all the information about what happens in Pakistan is reported. The Tribunal discussed that there had been violence in Rawalpindi during the Ashura festival in November 2013, where Shias and Sunnis had fought and a number of people had been killed.

#### Home region

43. The Tribunal has considered where the applicant's home region is located in Pakistan. This is relevant to the consideration as to what circumstances he may face on return to Pakistan. While the applicant has lived in Rawalpindi for a considerable period of time, it is reasonable to consider that his home region in Pakistan would be Parachinar. This is where he has spent the

predominant period of his life, and relevantly, where his family remained while he worked in Rawalpindi. Prior to coming to Australia he returned to Parachinar, where he remained for a short period of time before making his way to Australia. The Tribunal finds that Parachinar is the applicant's home region in Pakistan.

44. There is significant information about the circumstances for Shia Pashtuns, from the Bangash and associated Turi tribes, and from the Parachinar region of Pakistan.
45. The Tribunal accepts that the applicant is a Shia, a Pashtun from the Bangash tribe, and from the Parachinar region of Pakistan. This is a significant location in Pakistan, as it has been the site of an ongoing battle between the Shia and Sunni communities since 2007. Insurgent groups have been seeking to use a corridor between Pakistan and Afghanistan that passes through the upper Kurram Agency, and the majority Shia population in this region, particularly centred around Parachinar and surrounding districts, have denied them this route. This led to the violent clashes that started in April 2007,<sup>1</sup> led to the road between Peshawar and Parachinar being closed between 2007 and 2011, and has been the location of ongoing violence until the present day. The Pakistani Army has conducted a series of interventions in the FATA region, including a significant assault on the insurgent groups. This has led to a two way movement of people in the region, some being displaced while the UNHCR also reports that there have been a number of internally displaced people (IDPs) who have returned to the region in the past year.
46. The Tribunal has considered the country information in relation to the Kurram Agency. The violence in the region has been an ongoing occurrence since the 1980s, with upswings of violence reflecting domestic and regionally located issues. The most recent violence began in April 2007, with a peak in 2007 and 2008, but with sporadic events occurring until present. The Parachinar – Thall road, the significant Pakistan land access to the Upper Kurram Agency where Parachinar is the district capital, provides a distinct example of the difficulty of the region. Closed by militants for over four years since 2007, peace talks providing for the re-opening of the road in 2011, followed by splinter extremist groups disavowing the peace accords and conducting violent attacks on road convoys.
47. As stated by Jeffrey Dressler and Reza Jan<sup>2</sup> in a report for the Institute for the Study of War and AEI's Critical Threats Project: *The Haqqani Network in Kurram: The Regional Implications of a Growing Insurgency*, published in May 2011:

On February 5, 2011, Shia and Sunni communities in Parachinar, Kurram announced an end to a four-year-long feud. The years of fighting left over 2,000 people dead and over 3,500 wounded.<sup>83</sup> Tribesmen from both communities as well as members of Pakistan's legislative body, the National Assembly, participated in a 220-member tribal *jirga* that produced the newly-reached peace accord. Despite the appearance of legitimacy that the tribal *jirga* bestowed on the accord, the real agreement was reached beforehand through several rounds of negotiations between tribal elders, government officials, and members of the Haqqani Network. The Haqqani Network's involvement in brokering the agreement demonstrates its growing power and influence in the Pakistani tribal region in areas beyond North Waziristan.

The recently-signed accord represents an agreement between Sunnis and Shias, backed by Pakistani governmental representation, to cease attacks on each other's communities

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<sup>1</sup> Conflict in Pakistan tribal areas, 2008, British Broadcasting Corporation (BBC): Monitoring Research, 11 September, 2008,

<sup>2</sup> Reza Jan is Research Analyst and the Pakistan Team Lead for the Critical Threats Project at the American Enterprise Institute. Jeffrey Dressler is a Senior Research Analyst at the Institute for the Study of War in Washington, DC.

in upper, central, and lower Kurram. The main tenets of the accord will likely mirror the Murree Accord of 2008, requiring the return of captured or deceased tribesman, the opening of the Thall-Parachinar road and the resettlement of internally displaced peoples who fled the violence. Additionally, in exchange for pressuring Sunni militants to cease attacks on the Shias, the Haqqanis and affiliated groups will be provided with access into Afghanistan through formerly hostile Shia terrain.<sup>3</sup>

48. The actual violent acts conducted may be random and sporadic, these attacks are designed to keep the people of Parachinar and the Upper Kurram region on high alert and extremely anxious about the possibility of a violent incident that will cause significant loss of life. It is a different circumstance to the incidents of violence in Quetta City, where there is a constant threat of actualised violence, but the possibility of a violent attack on civilian targets in and around Parachinar remains a realistic threat that may be carried out and may harm individuals such as the applicant.
49. The country information is significant regarding the present dangers in Kurram Agency. Attempts by the Pakistani authorities to normalise relations between Sunni's and Shia's, between feuding tribal entities, to crack down on Taliban related attacks, and to bring about some form of temporary ceasefire, have so far failed. Agreements to stop fighting have been disrupted by elements seeking to continue the fight in this part of Pakistan, and destroy what little trust exists. The country information cited above shows that the authorities have little control over the Kurram Agency, that the police force do not have any real presence and that there is no state protection available in this part of Pakistan for individuals who have a background such as the applicant's. The Tribunal notes that the mosque attack in Parachinar in February 2012 was carried out by Fazal Saeed, the leader of a breakaway faction of the Pakistani Taliban. "We have targeted the Shia community of Parachinar because they were involved in activities against us", he told Reuters news agency.<sup>4</sup> A similar attack in September 2012 was also caused by Fazal Saeed.
50. In an assessment provided by DFAT in December 2013, which the Tribunal is required to consider as part of its assessment of country information, the following commentary was provided in relation to FATA:
  - 4.19 There are ongoing counterinsurgency operations by the Pakistani security services against the TTP and other militants in FATA. As a consequence there is a high level of generalised violence and widespread displacement of communities (of all sects). Violence against Shias in FATA has strategic, tribal and sectarian dimensions. DFAT assesses that Shias in FATA particularly in Kurram (Parachinar) are at a high risk of both generalised and targeted violence.
  - 4.20 The majority of the Shia population is concentrated in the Kurram and Orakzai Agencies. Kurram is estimated to have around 935,000 people and Shias are estimated to make up approximately 40 per cent of the community. Shias are primarily located in upper Kurram, near the Afghanistan border. Sunnis occupy lower and central Kurram.
  - 4.21 Of the ten sectarian attacks that occurred in FATA in 2012, nine were in Kurram Agency, some with high casualty rates. In July 2013, two major suicide bombs in

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<sup>3</sup> Jeffrey Dressler, Reza Jan, 2011, *The Haqqani Network in Kurram: The Regional Implications of a Growing Insurgency*, Institute for the Study of War and AEI's Critical Threats Project, May 2011, [http://www.understandingwar.org/files/Haqqani\\_Network\\_in\\_Kurram\\_web.pdf?bcsi\\_scan\\_A4C9E8056B19D97F=yQx9gMlzGNsc9vKSftvoCEdZgDtFAAAAB+9EEw==&bcsi\\_scan\\_filename=Haqqani\\_Network\\_in\\_Kurram\\_web.pdf](http://www.understandingwar.org/files/Haqqani_Network_in_Kurram_web.pdf?bcsi_scan_A4C9E8056B19D97F=yQx9gMlzGNsc9vKSftvoCEdZgDtFAAAAB+9EEw==&bcsi_scan_filename=Haqqani_Network_in_Kurram_web.pdf)

<sup>4</sup> BBC, 'Blast at Pakistan town 'kills 26'', 17 February 2012, <http://www.bbc.co.uk/news/world-asia-17077358>

Parachinar (which has a large Shia population) killed 60 people and injured 200. This attack was claimed by Ansar ul Mujahideen (a previously unknown group) to, according to a spokesperson, avenge the attacks on Sunnis in Syria and Iraq and in response to US drone strikes.

4.22 The current conflict in Kurram can be traced to the 1980s when the Turis (the only Pashtun Shia tribe) refused to provide support to the Mujahideen and later the al-Qaeda and Taliban forces fleeing Afghanistan. The Turi tribe still occupies a strategic strip of land in the north of Kurram Agency bordering Afghanistan, which the TTP and others wish to control. There has been a high degree of communal violence and attacks by Shia and Sunni militant groups, exacerbating pre-existing tribal/sectarian tensions. On the Sunni side, TTP and the Haqqani network are believed to be active and Shia based groups Hizballah, Mehdi Milita and Hydril Taliban are also operating in the region. Turi Shias, by virtue of their geographic concentration in upper Kurram, might be more easily targeted in sectarian violence than other Shias in the region.

4.23 The counterinsurgency operations and sectarian conflict in Kurram led to widespread displacement (of all sectarian groups). Many Shias sought support from relatives in neighbouring areas of Hangu, Kohat and Peshawar valley (urban and non-urban areas). However, as of December 2013, according to credible security analysts, there was a 'very delicate' truce between Shia and Sunni groups in Kurram. Travel into the region particularly to Parachinar which had previously been restricted was viable and returns of Internally Displaced Persons (IDPs) had started occurring, including small numbers of Shia families.

4.24 DFAT does not have numbers available on Shia returnees. Credible sources have told DFAT that they anticipate Shia families will start returning to the area in 2014. However, they expect that many Shia IDPs would opt to remain in Kohat, Hangu and Peshawar where they have greater support systems and a higher degree of anonymity.

4.25 Alongside Turi Shias, there are also some Bangash Shias in FATA. Bangash are mainly Sunni. Shia Bangash are believed to be located in Kohat, Hangu and Orakzai (in FATA and the settled areas of Khyber Pakhtunkhwa). DFAT is unable to ascertain the size of this community but credible sources have told DFAT that Bangash Shias are less visible and their Shia identities are difficult to distinguish.

4.26 Overall, DFAT assesses that the situation in FATA remains very volatile and there is a high degree of generalised violence that can affect Shias. In the past there have been high levels of communal level violence between Sunnis and Shias. Peace agreements at various periods have reduced conflicts between the tribal and sectarian groups. However, militant sectarian outfits remain very active in the region and have attacked rival tribal/sectarian groups including Turi and Bangash Shias at a high rate of frequency.<sup>5</sup>

51. Based on this information, the Tribunal accepts that the applicant has a real chance of serious harm arising from his ethnicity and religion in the Kurram Agency. The Tribunal considers that in the context of someone from that region of Pakistan, being a Shia will almost automatically ascribe you to being an ethnic Bangash or Turi Tribe member. While there is limited information that people are targeted specifically because of their ethnicity, the combination of the applicant's background as a Shia Bangash or Turi from this region places the applicant at risk of harm. The Tribunal considers that there is a significant amount of country information about the Kurram Agency in Pakistan which supported the contention that the applicant could not return to that part of Pakistan.

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<sup>5</sup> DFAT Thematic Report: Shias in Pakistan. 18 December 2013

52. The Tribunal finds that there is a real chance that the applicant will be seriously harmed by Sunni extremist organisations, such as the Haqqani Network or Tehrik-e-Taleban, who are seeking to harm Shia individuals from the Kurram Agency, due the extremist organisation's interest in destabilising the FATA region generally, and interest in establishing a base of operations in the Kurram Agency and the passes into Afghanistan. The Tribunal finds that that there is a real chance of serious harm, for the applicant should he return to Kurram Agency, FATA, or the nearby areas of Hangu, Peshawar, or Khyber Pakhtunkhwa province.
53. The Tribunal finds that is there is a real chance that the applicant would face serious harm now or in the reasonably foreseeable future if he was to return to FATA or Khyber Pakhtunkhwa, or Baluchistan for the Convention reasons of religion, ethnicity and membership of a particular social group as a Shia Muslim from Parachinar, and as a Bangash/Turi tribe member.
54. Having determined that the applicant does have genuine fears of returning to his home region, the Tribunal is required to consider whether the applicant could reasonably relocate to a separate part of Pakistan. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country. What is 'reasonable' in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights.
55. The issue of whether it would be reasonable to expect an applicant to relocate within Pakistan only arises if the circumstances indicate that there is a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution, that is, where the feared persecution is localised rather than nation-wide. Generally speaking, it is not necessary to identify a specific place in which an applicant can relocate or live.<sup>6</sup>
56. The Tribunal discussed with the applicant the prospect of relocating to another location in Pakistan where he would not face persecution. The applicant stated that all Shia are at risk of harm in all of Pakistan. He would be identified through his name and his attendance at the Imambargah and Shia festivals. The applicant stated his ID card would identify him as coming from the Parachinar region. The applicant stated that there are very limited numbers of Pashtuns, Bangash or Turi tribe members outside the western region of Pakistan. The applicant claimed that the government was complicit in the persecution of Shias, that they do not provide effective protection and support the Taliban. The applicant stated that the Taliban and the army exchanged clothes. The applicant's advisor stated that the applicant chose to go to Rawalpindi for economic reasons, but could not return. He would not have tribal support networks in other locations in Pakistan. The Bangash tribe is small, and he will be targeted without their support. There are reports of the situation in Pakistan deteriorating, with the army not providing support. The

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<sup>6</sup> *SZQBC* [2011] FMCA 563 (Smith FM, 18 July 2011) at [36], *SZOJV v MIAC (No.2)* [2012] FMCA 29 (Nicholls FM, 20 January 2012) at [64]; [70], upheld on appeal: *SZOJV v MIAC* [2012] FCA 459 (Siopis J, 4 May 2012), *Montes-Granados v MIMA* [2000] FCA 60 at [10]. See also *Ahmad v MIMA* (unreported, Federal Court of Australia, Sundberg J, 20 May 1997) at [12], *W404/01A v MIMA* [2002] FCA 540 (R.D. Nicholson J, 3 May 2002) at [23] which was upheld on appeal, *W404/01A of 2002 v MIMIA* [2003] FCAFC 255 (French, Lee and Carr JJ, 14 November 2003).

prospect of peace discussions with the Taliban has caused greater fear, as the failure of state protection was evident in having

57. The Tribunal has considered the applicant's claim that he will be persecuted across Pakistan, and that there is no location within Pakistan where he could relocate where he would not face persecution. The Tribunal has considered the circumstances of the applicant relocating to a location such as Rawalpindi, a city where the applicant has lived in for an extended period of time. As discussed above, the Tribunal did not accept that the applicant was targeted for harm personally during his time in Rawalpindi, or that he was required to modify his behaviour or act in any manner to reduce his profile in Rawalpindi during the time he worked in that location.
58. The applicant has claimed that all of Pakistan is dangerous for Shia. The Tribunal has considered this claim in the context of Rawalpindi. There is information that there has been violence against Shia in Rawalpindi. Most notably, in November 2013, during a Muharram procession, large groups of Shia and Sunni clashed in Rawalpindi. It is not clear which group initiated the unrest, but reports indicate that both groups used violence, with both Sunni and Shia being killed. Reports do not agree on the total number killed, with figures ranging from eight to ten. In response the military was asked to provide security and impose a curfew.<sup>7</sup> In December 2013 three people were killed and 14 injured when a suicide bomber detonated near an Imambargah in Rawalpindi. No group has taken responsibility.<sup>8</sup>
59. The Tribunal find that the available country information before it indicates that there are Sunni fundamentalist militant groups and organisations actively seeking to target the minority Shia population in Pakistan because they object to Shia Islam as a religion and because they want to gain as much influence and control over religious and political conduct in Pakistan as they can. The country information indicates that the risk to individual Shia as a result varies throughout Pakistan. In areas such as Kurram Agency and Peshawar the risk to Shia is greater than in many of the urban centres, such as Islamabad, Lahore and Rawalpindi.
60. While there have been incidents of violence against Shia, the Tribunal does not accept the assertion by the applicant that all Shia in Pakistan are at risk of harm. According to the Pakistan Institute for Peace Studies over 85 per cent of the recorded incidents (which included terrorist attacks and sectarian clashes) occurred in Kurram Agency in the FATA, Karachi, Quetta and Gilgit.<sup>9</sup> The Tribunal does not agree with the applicant's assertion that that Sipah-e-Sahaba seek to capture any Shia that they come across and want to harm them. The Tribunal noted that there are a significant number of Shia in Pakistan, who live their lives without being harmed, and while this does not preclude the possibility of violence, the chance of the applicant being harmed in an act of sporadic or general violence is one that the Tribunal considers is remote or mere speculation on behalf of the applicant.

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<sup>7</sup> Yasin, A & Asghar, M 2013, 'Ashura clashes turn Pindi into ghost town', *Dawn*, 17 November <<http://www.dawn.com/news/1056721/ashura-clashes-turn-pindi-into-ghost-town>> Haider, J 2013, 'Curfew imposed in Pindi after 10 killed', *Pakistan Today*, 16 November

<<http://www.pakistantoday.com.pk/2013/11/16/national/curfew-imposed-in-pindi-after-10-killed/>> 'Rawalpindi tragedy mars otherwise peaceful Ashura' 2013, *The Express Tribune*, 15 November <<http://tribune.com.pk/story/632311/muharram-10-live-updates-2/>>

<sup>8</sup> 'Three killed, 14 injured in Rawalpindi suicide blast' 2013, *The Express Tribune*, 17 December <<http://tribune.com.pk/story/646877/three-dies-in-a-suicide-blast-in-rawalpindi/>> 'Anti-Shia attack leaves 3 dead in Pakistan' 2013, *Press-Tv*, 17 December <<http://www.presstv.com/detail/2013/12/17/340549/2-die-as-blast-hits-hussainia-in-pakistan/>>

<sup>9</sup> <http://www.san-pips.com/>



61. In considering this, the Tribunal has taken account of the assessment of real chance. A fear of being persecuted is well-founded if there is a ‘real chance’ of being persecuted.<sup>10</sup> In *Chan v MIEA* Mason CJ observed that various expressions have been used in other jurisdictions to describe ‘well-founded fear’ – ‘a reasonable degree of likelihood’, ‘a real and substantial risk’, ‘a reasonable possibility’ and ‘a real chance’. His Honour saw no significant difference in these expressions, but preferred the expression ‘a real chance’ because it conveyed the notion of a substantial, as distinct from a remote chance, of persecution occurring and because it was an expression that had been explained and applied in Australia.<sup>11</sup> A ‘real chance’ is a substantial chance, as distinct from a remote or far-fetched possibility; however, it may be well below a 50 per cent chance. According to Mason CJ in *Chan v MIEA*, the expression ‘a real chance’:

... clearly conveys the notion of a substantial, as distinct from a remote chance, of persecution occurring. ... If an applicant establishes that there is a real chance of persecution, then his fear, assuming that he has such a fear, is well-founded, notwithstanding that there is less than a fifty per cent chance of persecution occurring. This interpretation fulfils the objects of the Convention in securing recognition of refugee status for those persons who have a legitimate or justified fear of persecution on political grounds if they are returned to their country of origin.<sup>12</sup>

62. In the same case Dawson J stated:

... a fear can be well-founded without any certainty, or even probability, that it will be realized. ... A real chance is one that is not remote, regardless of whether it is less or more than 50 per cent.<sup>13</sup>

and Toohey J stated:

A “real chance” ... does not weigh the prospects of persecution but, equally, it discounts what is remote or insubstantial.<sup>14</sup>

Similarly, according to McHugh J:

[A] fear may be well-founded for the purpose of the Convention and Protocol even though persecution is unlikely to occur. ... an applicant for refugee status may have a well-founded fear of persecution even though there is only a 10 per cent chance that he will be ... persecuted. Obviously, a far-fetched possibility of persecution must be excluded.<sup>15</sup>

63. Thus, as the High Court confirmed in *MIEA v Guo*, *Chan* establishes that a person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.<sup>16</sup>

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<sup>10</sup> *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9.

<sup>11</sup> *Chan v MIEA* (1989) 169 CLR 379 at 389.

<sup>12</sup> (1989) 169 CLR 379 at 389.

<sup>13</sup> *Chan v MIEA* (1989) 169 CLR 379 at 397-398.

<sup>14</sup> *Chan v MIEA* (1989) 169 CLR 379 at 407.

<sup>15</sup> *Chan v MIEA* (1989) 169 CLR 379 per McHugh J at 429. However, this does not mean that the Tribunal must consider whether a 10 per cent chance of persecution has been established. In *Altintas v MIEA* (unreported, Federal Court of Australia, Nicholson J, 23 January 1997) the Court held at 10: ‘The ratio decidendi of *Chan* did not require the Tribunal to consider whether a 10 per cent chance of persecution was established. Rather the Tribunal was required to consider whether, on all the evidence before it, a “real chance” was established’.

<sup>16</sup> *MIEA v Guo* (1997) 191 CLR 559 at 572.

64. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation. In *MIEA v Guo*, the Court said:

Conjecture or surmise has no part to play in determining whether a fear is well-founded. A fear is “well-founded” when there is a real substantial basis for it. As *Chan* shows, a substantial basis for a fear may exist even though there is far less than a 50 per cent chance that the object of the fear will eventuate. But no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.<sup>17</sup>

65. The Tribunal finds the country information to suggest that, while there have been attacks on public Shia events in Rawalpindi, it cannot be said that all Shia face a real chance of suffering serious harm in Rawalpindi solely on account of their religion. As discussed with the applicant at the hearing, there is a reasonable Shia population in Rawalpindi, which the applicant had been a part of. This population attends mosques to conduct their religious practices, as did the applicant. The Shia population continues to conduct business, and does not modify their behaviour, beyond taking ordinary precautions for safety as all the population undertakes. The Shia population continues to practice their religion despite the violence that has occurred during religious occasions. The Tribunal considers that the prospect of the applicant being harmed in Rawalpindi because he is a Shia is one that is not a real chance, but one that is remote and insubstantial. The Tribunal finds that the applicant does not have a well-founded fear of persecution for this reason, now or in the reasonably foreseeable future.
66. The Tribunal has also considered the applicant’s circumstances as a Bangash/Turi and a Pashtun in Rawalpindi. The Tribunal has also considered the applicant’s background of coming from the Parachinar region of Pakistan in considering relocation to Rawalpindi. The applicant has stated that as a member of this small tribe, he would be not have significant support in the Rawalpindi community and would be both isolated and prominent in his coming from this small tribe. When asked about how he faced a risk being a Pashtun, the applicant was not sure how this would affect him, though he noted that only a limited number of Pashtuns were Shia, most were Sunni. The applicant has claimed his ID and accent place him as someone coming from the Kurram Agency, which will place him at risk of harm.
67. The Tribunal has considered the applicant’s history and experience of living in Rawalpindi, where as a Bangash or Turi and a Pashtun the applicant lived and worked for an extended period of time. The applicant was able to congregate with other Shia, live, work and pray with colleagues who were Shia, and work with and work for people who were a mix of religious backgrounds. There is a reasonable Shia community that the applicant involved himself in over a period of time. Due to the fighting between Sunni and Shia in the Kurram Agency, there has been a number of people who have relocated from the Kurram Agency to Rawalpindi and Islamabad. According to a November 2013 *Dawn* report, as many as 20,000 Turis have relocated to Islamabad/Rawalpindi in response to attacks on the Taliban:

In 2009, sectarian violence erupted between two groups in Parachinar (Kurram Agency) during Muharram, and the sole Tal-Parachinar Road, which linked the area to the remaining country, was cut off. As a result, several people from the Turi tribe migrated to Rawalpindi and Islamabad where they settled. According to Ajeeb Ali Turi, a local

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<sup>17</sup>*MIEA v Guo* (1997) 191 CLR 559 at 572; cf *MIEA v Wu Shan Liang* (1996) 185 CLR 259 at 293.

businessman in Pindi, almost 10,000 people of the tribe resided in the city while an equal number lived in Bhara Kahu, Islamabad.<sup>18</sup>

68. Given the numbers of people who have moved out of the Kurram Agency in the recent years, the Tribunal considers that the applicant's fears of being targeted because he comes out of that region to be unfounded. The applicant used his identification and spoke with his accent during periods when the fighting in his home region was at its most violent, during which he did not face any reprisal. The Tribunal considers that on returning to Pakistan and relocating to Rawalpindi, the applicant would not be harmed because of his background coming from Parachinar or from the Kurram Agency, now or in the reasonably foreseeable future.
69. Having determined that the applicant can relocate to a location where he does not face a real chance of serious harm, the Tribunal has considered whether it is reasonable in all the circumstances for the applicant to relocate to Rawalpindi.
70. The Tribunal considers that the applicant has a relevant and an extended history of living in Rawalpindi. He has connections and has worked for a Rawalpindi company, firstly as a labourer and then as [Occupation 2]. These skills learnt, and the ability to leverage his connections for the purpose of gaining employment, provides the applicant with the ability to establish himself and his family in Rawalpindi. While the applicant has previously lived by himself in Rawalpindi, gaining finances to support his family, given the capacity for the applicant to earn money in Rawalpindi he would be in a position to support his family living in Rawalpindi themselves. The applicant has also shown that he is willing to leave the family support of the home in Parachinar to establish himself in Rawalpindi.
71. The Tribunal has also considered the effect of generalised violence in Pakistan in the context of the reasonableness of the applicant relocating within Pakistan. Generalised violence in Pakistan occurs sporadically in a number of locations, and the Tribunal does not accept that the applicant is specifically targeted by this general violence. The Tribunal considers that the prospect of the applicant being harmed in an incident of generalised violence within Pakistan to be one that is remote.
72. The applicant has shown an aptitude, in his living for an extended period in locations in Pakistan outside of his home region, and the Tribunal considers that he could reasonably establish himself in another location within Pakistan. The Tribunal considers that it is reasonable, in the sense of being practicable, for the applicant to relocate having regard to all of the circumstances.
73. The Tribunal finds that the applicant can continue to be a practising Shia Muslim, a Bangash Turi tribe member, a Pashtun and a Shia Bangash/Turi from the Parachinar region or the Kurram Agency in areas of Pakistan where he does not have a real chance of serious harm. The Tribunal finds that there are locations in Pakistan where he will not face a real chance of serious harm.
74. Having considered the applicant's claims individually and cumulatively, the Tribunal is not satisfied that the applicant faces a real chance of serious harm within the entirety of Pakistan now or in the reasonably foreseeable future. The Tribunal finds that the applicant is in a position to relocate to Rawalpindi, a location where he would not face a real chance of serious harm because of his Shia, Bangash, Pashtun and Parachinar background.

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<sup>18</sup> Khattak, I 2013, 'Outsiders' responsible for the clash', *Dawn*, 17 November <<http://www.dawn.com/news/1056743/outside-responsible-for-the-clash>>

75. Having determined that the applicant could relocate to areas of Pakistan other than his home area, the Tribunal does not consider that the applicant has a well-founded fear of persecution for the reasons of his race, religion, or associated particular social group reasons.

### **Complementary Protection**

76. On the basis of the applicant's evidence that he is a national of Pakistan, the Tribunal finds that Pakistan is the applicant's receiving country for the purposes of s.36(2)(aa).
77. As the Tribunal does not accept that the applicant is a refugee as defined in the Refugee Convention, the Tribunal has considered the alternative criteria in s.36(2)(aa), whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act.
78. The Tribunal has determined that the applicant will face a real chance of serious harm in his home region. Section 36(2)(aa) refers to a 'real risk' of an applicant suffering significant harm. The 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition: *MIAC v SZQRB* [2013] FCAFC 33. Given this previous finding, the Tribunal considers that there is a real risk of significant harm in the applicant's home region.
79. Under s.36(2B)(a) of the Act, there is taken not to be a real risk that an applicant will suffer significant harm in a country if the tribunal is satisfied that it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm. That relocation must be 'reasonable' is also a requirement when considering the definition of 'refugee' and the tribunal draws guidance from the judgments of the High Court in *SZATV v MIAC* and *SZFDV v MIAC* which held that whether relocation is reasonable, in the sense of 'practicable', must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.
80. Having regard to the definition of significant harm in s.36(2A) of the Act as set out under the heading 'relevant law' above, and the findings of the Tribunal as set out above, the Tribunal does not accept that what the applicant might experience upon return to particular locations within Pakistan will involve a real risk of being arbitrarily deprived of his life; having the death penalty carried out on him; or being subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. The Tribunal has determined that the applicant will have to relocate from his home region, but considers that there are locations within Pakistan where he will be able to relocate to where he will not face a real risk of significant harm. The Tribunal has found that it would be reasonable for the applicant to relocate within Pakistan for the purposes of the Convention considerations, and considers that the same applies in considering the applicant's complementary protection claims.
81. In light of the above, the Tribunal is not satisfied on the evidence before it, that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan that there is a real risk he will suffer significant harm. The Tribunal is therefore not satisfied that the applicant meets the alternative provisions in s.36(2)(aa).

82. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
83. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
84. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

### **DECISION**

85. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Stuart Webb  
Member